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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,817	06/26/2003	Daniel William Moffatt	14716.01	5499
7590	01/11/2006			
Sean D. Solberg DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498				EXAMINER FLETCHER, MARLON T
				ART UNIT 2837
				PAPER NUMBER DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,817	<b>Applicant(s)</b> MOFFATT ET AL.
	<b>Examiner</b> Marlon T. Fletcher	<b>Art Unit</b> 2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 31 October 2005.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.   
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-6, 10-12, 16-19, are rejected under 35 U.S.C. 102(a) as being anticipated by Comair et al. (2003/0037664).

As recited in claims 1 and 16, Comair et al. disclose an interactive music apparatus comprising: at least one actuator (52) configured to transmit a signal upon actuation; a voltage converter operably coupled to the at least one actuator, the voltage converter configured to convert the signal from the actuator into a data stream (page 3, paragraph 38; and pg 4, para. 41 and 47); a processing computer (114) configured to receive the data stream from the voltage converter, the processing computer configured to convert the data stream into a first output signal and a second output signal (pg 4, para. 47; and figure 3B); a speaker (61U61R) configured to receive the first output signal and emit sound based on the first output signal; and an output component (56), the output component configured to receive the second output signal and perform an action based on the second output signal. Clearly seen in figure 3B, the controller (52) directly relates to first and second output signals (audio and video; 120 and 122) wherein the video signal is related to the audio or sound signal.

As recited in claim 2, Comair et al. disclose the apparatus, wherein the sound

and the action are interactive (abstract).

As recited in claims 3, 17, and 19, Comair et al. disclose the apparatus, wherein the output component comprises a web browser and a display monitor and the action comprises launching the web browser and displaying the browser on the display monitor (pg 4, para. 50-52), wherein uploading and downloading require a browser.

As recited in claims 4 and 18, Comair et al. disclose the apparatus wherein the action further comprises displaying an image on the browser (figs. IA, IB, and 3B).

As recited in claim 5, Comair et al. disclose the apparatus, wherein the action further comprises displaying sheet music on the browser (pg 2, para. 28., and pg 5, para. 670, wherein music can be written.

As recited in claim 6, Comair et al. disclose the apparatus, wherein the action further comprises displaying text on the browser (figs IA and 1 B).

As recited in claims 10 and 11, Comair et al. disclose the apparatus, further comprising a MIDI sound card operably coupled to the processing computer, the Midi sound card configured to receive the first output signal, further comprising a Midi sound module operably coupled to the Midi sound card, the MIDI sound module configured to receive the first output signal from the sound card, process the first output signal, and transmit the output signal to the processing computer (pg 2, para. 29 and pg 5, para. 67; and figure 3B).

As recited in claim 12, Comair et al. disclose the apparatus, further comprising a wireless transmitter operably coupled to the at least one actuator and a wireless receiver operably coupled to the voltage converter, the wireless transmitter configured

to transmit wireless signals to the wireless receiver (pg 4, para. 41).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comair et al. in view of Georges et al. (2004/0089142).

Comair et al. are discussed above. Comair et al. do not disclose displaying a keyboard on a monitor or displaying a music score.

However, Georges et al. (claims 7 and 8) disclose an apparatus, wherein the output component comprises a display monitor and the action further comprises displaying a keyboard on the display monitor (figure 18) and wherein output component comprises a display monitor and the action further comprises displaying a music staff on the display monitor (figure 21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Georges et al., with the teachings of Comair et al., because Comair et al. provide displaying wherein the displaying could be written audio or a score, and Georges et al. provides both the structure display of a keyboard and the staff.

5. Claims 9, 13-15 and 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Comair et al. in view of Airaudi et al. (6,743,164).

Comair et al. are discussed above. Comair et al. disclose an interactive music apparatus comprising: at least one actuator', a wireless transmitter and a wireless receiver; a voltage converter; a processing computer', a speaker; a display monitor (56) configured to receive the second output signal and display an image based on the second output signal, the image configured to be interactive with the sound; and a web browser. As recited in claims 14 and 15, Comair et al. disclose the apparatus, further comprising a MIDI sound card operably coupled to the processing computer, the Midi sound card configured to receive the first output signal; further comprising a Midi sound module operably coupled to the Midi sound card, the MIDI sound module configured to receive the first output signal from the sound card, process the first output signal, and transmit the output signal to the processing computer (pg 2, para. 29 and pg 5, para. 67; and figure 3B).

Comair et al. do not disclose a lighting controller.

However, Airaudi et al. (claims 9, 1,3, and 20) disclose an apparatus, wherein the output component comprises a lighting controller (10) and at least one light and the action comprises displaying light at the at least one light (column 6, lines 35-42 and figure 5d).

Official Notice is taken with respect to it being known in the art to wirelessly or remotely control multiple (third and fourth components) through a single processor.

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the teachings of Airaudi et al. with the apparatus of Comair et al., because the addition provides additional visual indications, which allows more tools for indicating action to the user.

***Response to Arguments***

6. Applicant's arguments filed 10/31/2005 have been fully considered but they are not persuasive.

The applicant argues that Comair et al. do not provide first and second output signals related to the actuation by the user. The examiner disagrees. In the same manner as a video game as pointed out by the applicant, Comair et al. provide controlling audio and video based on actuation wherein one relates to the other. Both signals are provided through a processing computer. The applicant also includes amendments to the claim to add a fourth means to be controlled by an actuator. It is well known to control multiple devices through one processor, wherein video games as well have the capability of playing music, generating sound corresponding to a visual display, and connecting to the internet through a browser. Further, it has been held that mere duplication of essential working parts of a device (fourth controlled device) only requires routine skill in the art. SST. Regis Paper Co. v. Bemis Co., 193 USPQ 8. The claims remain rejected.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-w, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MTF  
January 8, 2006



MARLON T. FLETCHER  
PRIMARY EXAMINER